Objective: Justice

A United Nations Review Dedicated to the Promotion of Justice through the Self-determination of Peoples, the Elimination of Apartheid and Racial Discrimination, and the Advancement of Human Rights

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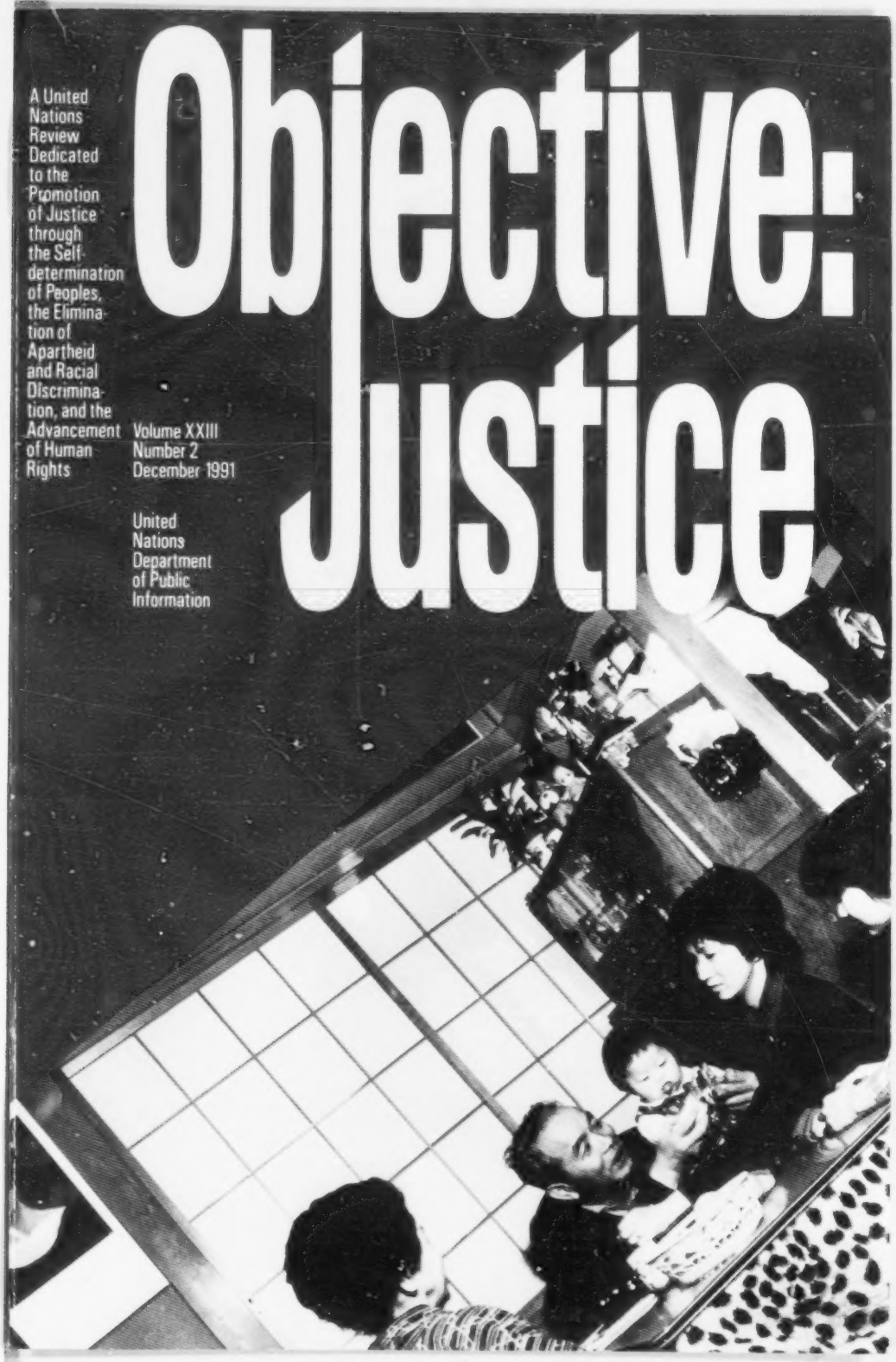

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ONUSAL in El Salvador

The first United Nations peace-keeping mission placing special emphasis on human rights has helped bring to an end the 12-year civil war in El Salvador, in which an estimated 70,000 people lost their lives.

The peace-keeping mission, known as the United Nations Observer Mission in El Salvador (ONUSAL), started operations in the country in July 1991.

The creation of ONUSAL was envisaged in an agreement of vital importance to the solution of the Salvadorian conflict—the Agreement on Human Rights signed on 26 July 1990 at San José, Costa Rica, by the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN).

The Agreement was the first major achievement of a complex negotiation process conducted by the parties under the auspices of the United Nations Secretary-General.

The objective of the negotiations, initiated by the Government of El Salvador and FMLN in September 1989, was to achieve a series of political agreements to end the civil war by political means as speedily as possible, promoting democratization in the country, guaranteeing respect for human rights and reunifying Salvadorian society.

Implementation of all agreements signed between the two parties was subject to verification by the United Nations.

Human Rights Monitoring

The Agreement on Human Rights provided for the establishment of a United Nations verification mission, to monitor nationwide respect for and the guarantee of human rights and fundamental freedoms in El Salvador.

According to the Agreement, the Mission was to take up its duties at the end of the war. But shortly after signing the Agreement, the two parties independently requested that the Mission be set up without waiting for a cease-fire.

On 20 May 1991, the Security Council established ONUSAL, to monitor all agreements concluded between the Government of El Salvador and FMLN. The Mission's mandate, in its first phase as a peacekeeping operation, was to verify the compliance by the parties with the Agreement on Human Rights.

ONUSAL was inaugurated on 26 July 1991. "There are high expectations among Salvadorians that our presence will help to improve the situation in El Salvador," said Iqbal Riza, of Pakistan, ONUSAL's Chief of Mission. He added that the Mission would not only observe and report on human rights situations, but also investigate and resolve cases. "We will work with the Government on one side, and with the FMLN on the other side," Riza said.

At this stage, the tasks of ONUSAL included monitoring the human rights situation in El Salvador; investigating cases of alleged human rights violations; promoting human rights in the country; making recommendations to eliminate violations; and reporting to the Secretary-General, the Security Council and the General Assembly.

Judge Philippe Texier, of France, was appointed Director for Human Rights Verification. He was assisted by a team of human rights advisers and observers, legal advisers and police observers.

The broad powers conferred on ONUSAL by the Agreement on Human Rights included the possibility of visiting any place freely and without notice; receiving communications from any Salvadorian individual, group or entity; interviewing freely any individual or group; conducting direct investigations; and using the media to the extent useful for fulfilling its mandate. The Agreement thus assigned to ONUSAL a role unprecedented in the history of the United Nations

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In assuming its task, ONUSAL adopted a two-phase approach. First it set up its regional offices and laid the operational basis for its work. ONUSAL teams travelled all over the country, making contacts with political, military and juridical authorities, as well as with organizations representing civilian society. ONUSAL also made contacts with FMLN, despite the difficulties created by the continuing conflict.

During this phase, ONUSAL received the first complaints of alleged human rights violations, which it followed up on a preliminary basis.

Second Phase

On 1 October 1991, ONUSAL entered its second phase of operations, in which it began to investigate cases of alleged human rights violations and to follow them up systematically with the competent State organs. ONUSAL also maintained a dialogue with FMLN on its alleged violations of the San José Agreement. The purpose of all such activities was to establish which allegations were true, to find out what action had been taken to punish those responsible and to prevent such violations in future.

By then, ONUSAL had deployed its personnel around the country, with headquarters in San Salvador, regional offices in San Salvador, Santa Ana, San Vicente and San Miguel, and regional sub-offices in Chalatenango and Usulután. Each of the regional offices was staffed by human rights observers, legal officers, police investigators, military liaison officers and a political affairs officer.

During the second phase, ONUSAL greatly expanded its contacts with the parties. For instance, it held regular working meetings with an inter-agency group of the Salvadorian Government; it held regular coordination meetings at the highest levels with the main State organs; and it expanded its local and regional contacts with the political, military and judicial authorities.

ONUSAL also held periodic meetings at Mexico City and Managua with the FMLN Political and Diplomatic Commission, and was in contact with FMLN leaders inside El Salvador.

The Mission also set up coordination mechanisms with non-governmental human rights organizations, and started a human rights educational programme.

As of November 1991, ONUSAL consisted of 135 international staff from 31 countries. This included 57 human rights observers and advisers, legal advisers, educators and political affairs officers; 15 military liaison officers; 27 police advisers; and 36 administrative and communication staff.

In the Midst of the Conflict

Both parties welcomed the establishment of ONUSAL, noted Professor José Antonio Pastor Ridruejo, who as Special Representative on El Salvador of the United Nations Commission on Human Rights had been monitoring the human rights situation in the country since 1981. "The positive attitude of the Government and FMLN with regard to the establishment and functioning of ONUSAL ... demonstrates the sincere interest of both parties in ensuring the fullest possible compliance with existing agreements and any that may be reached in the future", he stated in his October 1991 report on El Salvador.

ONUSAL's first report, issued on 16 September 1991, noted that the persistence of the armed conflict and its escalation were creating a considerable amount of tension affecting the fundamental rights of the people. The absence of a cease-fire was complicating the Mission's verification task.

According to the report, one complication was a juridical one, related to the verification, in the midst of an armed conflict, of an agreement conceived for peace-time. In addition, the need to protect members of the Mission in a situation of armed conflict complicated the verification of the agreement.

ONUSAL's second report, issued in November 1991, indicated that the Mission seemed to enjoy complete freedom of movement and access in its efforts to verify human rights and had encountered no deliberate obstruction. The report also noted that military clashes which seriously threatened the safety of ONUSAL personnel often occurred while they were performing verification functions in the field.

Direct Negotiations

Meanwhile, negotiations to find a political solution to the conflict continued, with the participation of Alvaro de Soto, the Secretary-General's Personal Representative for the Central American Peace Process. On 30 August 1991, the Secretary-General invited Salvadorian President Alfredo Cristiani and the General Command of FMLN to United Nations Headquarters, for consultations to break the deadlock in the negotiations.

Both sides accepted, and on 16 September the Secretary-General met with President Cristiani and the FMLN General Command. The talks led to the signing, on 25 September, of an agreement on the conditions and guarantees for the reintegration into society of FMLN.

On 14 October 1991, FMLN announced that it would cease all offensive operations by 16 November. After that date, armed confrontation dwindled considerably.

Direct negotiations continued in Mexico City on steps towards a final accord. The talks were attended by the Secretary-General's Personal Representative.

On 16 December, delegations of the Salvadorian Government and of the FMLN began meetings in New York, with the participation of the Personal Representative. After round-the-clock talks, the parties on 31 December reached an agreement to bring into effect a cease-fire on 1 February 1992.

New Mandate

The negotiations led to the El Salvador Peace Agreement of January 1992—the culmination of 24 months of United Nations efforts towards a solution.

UN Photo/M. Grant

United Nations Secretary-General signs 31 December 1991 agreement.

On 14 January 1992, the Security Council enlarged ONUSAL's mandate to include verification and monitoring of the El Salvador Peace Agreement. In addition to verifying the implementation of the 1990 Human Rights Agreement, ONUSAL was to verify all aspects of the cease-fire and the separation of forces, and monitor the maintenance of public order during the transitional period while the new National Civilian Police was set up.

The El Salvador Peace Agreement was signed in Mexico City on 16 January 1992, at a ceremony attended by the United Nations Secretary-General. "The long night of El Salvador is drawing to an end", said the Secretary-General at the signing of the Peace Agreement. The various agreements which led to the Peace Agreements "constitute a prescription for a revolution achieved by negotiation", he said.

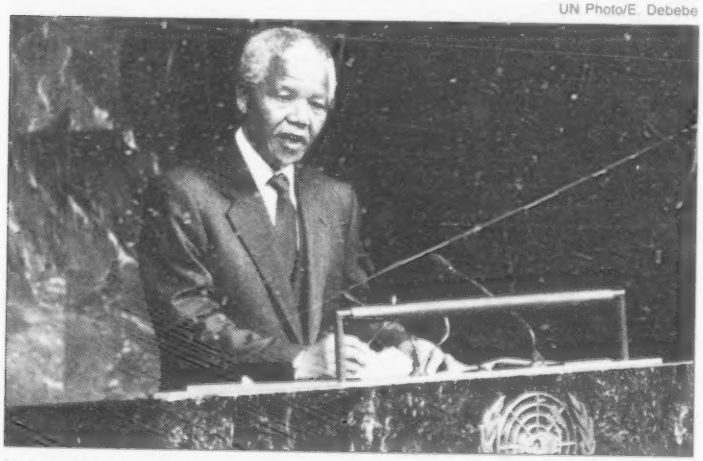
When ONUSAL began monitoring human rights, it was treading new ground, the Secretary-General said. "The broadened responsibilities of ONUSAL . . . are an ambitious step by the international community to back the effort of the Salvadorians, and hence of Central Americans in general, to break the cycle of poverty and violence and to stride energetically towards development, democracy and peace."

Taking the Final Steps Towards Ending Apartheid

Nelson Mandela was back at the United Nations in December 1991. The President of the African National Congress (ANC) of South Africa addressed the UN General Assembly on 3 December, during the debate on apartheid.

Mandela returned 18 months after his first, triumphant visit to the United Nations in June 1990—four months after his release from 27 years of captivity. On that occasion he had attended a special session, convened in his honour, of the United Nations Special Committee against Apartheid.

UN Photo/E. Debebe



Nelson Mandela addressing the General Assembly.

In his speech at the 1991 General Assembly, Mandela assessed developments in South Africa, stated his views on the new world order, and called for "an almost superhuman effort ... to address the gross imbalances in the world economy".

Excerpts from his speech:

"As our country starts on its final lap towards the realization of the goals enshrined in the UN Charter, the [Universal] Declaration of Human Rights, as well as the Declaration on South Africa adopted by this Assembly two years ago this month, the leadership of the ANC thought that it was important that we should come back to New York to share with you our views on the subject of your agenda.

"Thanks to the joint efforts of our people and Governments and peoples represented here, South Africa has embarked on its own race to normality...

"We envision a South Africa which shall, in all respects, belong to all who live in it, black and white. Its political life will be governed by a thoroughgoing democratic constitution, based on the principle of one person, one vote, without any distinction on grounds of race, colour, gender or creed, and without any element whatsoever of racial domination and discrimination...

"At the same time, the new South Africa will have to address the burning question of mass poverty, which afflicts millions of our people, especially the black population. Also to be dealt with as a matter of urgency are, of course, questions of the gross racial imbalances in the distribution of income, wealth, land and opportunity.

"It is common cause among the majority of our people that the political settlement we seek to reach cannot survive for very long if these questions relating to the standard of living of the people as a whole and the quality of life are not addressed...

"Precisely because we have not as yet reached the goal of liberation towards which all of us have striven, we believe that there is need for continued international pressure to encourage speedy movement forward towards ending the system of apartheid. Sanctions therefore continue to be important.

"At the same time, we believe that such sanctions should be lifted in phases corresponding to actual

progress being achieved within South Africa. The two major phases ahead of us would be delineated by the establishment of the interim Government, and secondly the election of the new Government in terms of a democratic constitution...

"Democratic South Africa will rejoin the international community in a situation in which a new world order is being born. As this new order will of necessity impact on our own destiny, we cannot avoid commenting ... on what we believe it should be. It is our view that this new world order should be characterized, among other things, by:

- a democratic system of international relations;
- respect for the right of nations to self-determination and independence:
- respect for human rights;
- the elimination of poverty, deprivation and economic backwardness;
- ending the practice of the resort to force to settle international disputes; as well as:
- protection of the environment;
- strengthening and democratizing the institutions of this Organization to ensure that it plays its role as one of the principal architects of that new world order ...

"There can be no new world order while some are super-rich while others remain abysmally poor. Indeed the very struggle for democracy and human rights throughout the world is made more difficult precisely by these levels of poverty.

"We are taking the final steps towards ending the apartheid system of white minority domination. Acting together, we have the possibility to bring into being a new country which you will be proud and happy to readmit into the ranks of this Assembly.

"As we have done in the past, let us continue to act in concert so that we achieve our common purpose as quickly as possible. Through our common victory over the apartheid system in South Africa, we will

also strike an important blow against racism in general, which seems to be raising its ugly head in other parts as well.''

Challenges to Human Rights at the Close of the Twentieth Century

The need to ensure respect for human rights was the principal theme to emerge at the International Journalists' Round Table sponsored by the Department of Public Information (DPI) of the United Nations, which convened at United Nations Headquarters on 14-16 October 1991.

Fifty journalists from all regions of the world joined senior United Nations officials and other experts concerned with human rights to discuss "Challenges to Human Rights at the Close of the Twentieth Century".

Protecting refugees and internally displaced persons, ways to create a just society, and the problem of international economic disparities were among the most debated topics. The discussion also focused on the safety of journalists and on discriminating practices against HIV carriers and AIDS patients.

Among the participants invited by DPI to attend the Round Table were journalists from some 30 countries—including Australia, Canada, Chile, Czechoslovakia, El Salvador, Israel, Jordan, Kenya, the Philippines, the United Kingdom, the United States and the Soviet Union, as well as from Hong Kong. Participants also included correspondents of international news media based at the United Nations, and international correspondents working in the New York area.

Ensuring Respect for Human Rights

There is a growing interest and concern over human rights among the world public, according to Thérèse P. Sévigny, head of DPI, who cited results of a recent DPI world-wide public opinion polling programme. Public opinion now called for narrowing the gap between aspirations expressed in human rights instruments and facts, she said.

Human rights are not a "western invention", stressed Jan Martenson, head of the United Nations Centre for Human Rights: the provisions of the Universal Declaration of Human Rights have been incorporated into the legal systems of many non-western countries. What was really important was how to implement human rights instruments. Having developed a series of legal instruments, now it was the time for effective implementation, he said.

UN Photo/E. Debebe

Jan Martenson, head of the United Nations Centre for Human Rights, addresses the Round Table.

"Who is going to implement the human rights norms?" asked Vitit Muntarbhorn, United Nations Special Rapporteur on the Sale of Children. He emphasized the importance of implementing standards, as opposed to upgrading existing ones.

The issue of implementation was also raised by Jerome Shestack, Chairman of the International League for Human Rights. There were two aspects in human rights: setting of standards and implementation, he said. Standards were now quite sufficient and well recognized, while implementation still remained ineffective.

Mr. Shestack acknowledged the results obtained by the United Nations through its mechanisms

of implementation, such as the procedure of receiving confidential communications from individuals under Economic and Social Council Resolution 1503(XLVIII), commonly known as the 1503 procedure; the setting up of working groups and special rapporteurs; the establishment of treaty bodies such as the Human Rights Committee; and the development of advisory services and information campaigns.

Non-governmental organizations (NGOs) played a different role—that of consultant, catalyst and opposition, he said. They were active as catalysts: the Convention against Torture, for instance, was the brainchild of Amnesty International, he said. NGOs had also been pressing their Governments to include human rights as a major determinant of foreign policy. And NGOs acted as a stimulus to the United Nations system, whose slow administrative process and lack of actions, he said, frustrated the effective implementation of human rights instruments.

In Mr. Shestack's view, more money should be spent on implementation, including the hiring of more lawyers and officers to analyze and review reports, in particular for communications under Resolution 1503. In addition, the Secretary-General, in his exercise of good offices, should pay more attention to human rights issues.

The relationship between technical cooperation and observance of human rights was raised by Ian Chambers, Representative of the International Labour Organisation to the United Nations, New York. "Can or should the UN system, which includes... the World Bank and the IMF [International Monetary Fund], make its support conditional on a Government's respect for human rights?" he asked.

Mr. Chambers also questioned the implicit assumption often held that development—including its human rights component—meant increasing resemblance to the societies of Western Europe and the United States.

In answer to a question as to whether linking humanitarian assistance to the situation of human rights was permissible, Ambassador Andreas Mavrommatis, of Cyprus, a senior member of the United Nations Human Rights Committee, replied that when the situation was an emergency situation, linking humanitarian assistance to human rights conditions should not be allowed. This kind of linkage should only be allowed in relation to economic assistance.

Protecting Refugees and Displaced Persons

Participants stressed the difficulties in the effort to protect the human rights of refugees and displaced persons.

"Population movements are an essential component of an emerging new world order," said Sadako Ogata, United Nations High Commissioner for Refugees. "The desire of people to move across borders to enjoy freer and better opportunities helped bring down the Iron Curtain and thus change the old world order."

UNHCR/A. Hollmann

Refugee issues are linked to peace, justice and development.

In terms of causes as well as effects, refugee issues were clearly linked to peace, justice and develop-

ment. Violations of human rights and underdevelopment produced refugees and migrants, Mrs. Ogata said. "The presence of refugees may become a source of tension between States and may impede development, by diverting limited resources and creating instability in the countries of origin", she said. "Development alone is of limited value, unless linked to improving the human rights situations which cause displacement."

"Often overlooked in discussions about humanitarian issues is the human rights dimension", said Roberta Cohen, Senior Advisor for Human Rights, Refugee Policy Group. Despite numerous violations of human rights inflicted on refugees, such as piracy attacks, rape, detention in inhumane conditions and expulsion, humanitarian and human rights issues had grown up in isolation from one another.

In Ms. Cohen's view, one of the reasons for this gap in the United Nations was that the main focus of human rights violations had been on the violations within a country. The Office of the United Nations High Commissioner for Refugees (UNHCR) and NGOs in recent years had begun to recognize this problem. But UNHCR "is not always able to ensure full protection for refugees, asylum seekers and displaced persons", she said. Its main legal instrument—the Convention relating to the Status of Refugees—did not include the remedies that human rights instruments did; it gave a narrow definition of refugees; and it did not address the root causes of displacement.

Forcible repatriation and internally displaced persons, she said, were two of the major issues which required more attention by the United Nations human rights bodies. To respond to these issues, the United Nations would have to confront the obstacle of sovereignty, and to involve human rights bodies in its overall efforts to protect internally displaced persons.

The only difference between internally displaced persons and refugees was whether one had crossed the border, said Catherine O'Neill, Chair,

Women's Commission for Refugee Women and Children. The assistance of refugees under the existing framework also discriminated against those who lived away from borders, as they had less likelihood of reaching the border and receiving international assistance as refugees. ''The world community faces the challenge of evolving a more equitable humanitarian response to people in trouble who have lost the protection of their own Government'', she said.

UN Photo/J. Isaac

The world community must provide a more humanitarian response to the needs of refugees.

Ms. O'Neill suggested the possibility of ''humanitarian intervention'' by the United Nations through an ''international humanitarian rapid deployment force'' and an ''international protective military force''.

Promoting Social Justice

Introducing the topic of social justice and economic disparities, Margaret J. Anstee, head of the United Nations Centre for Social Development and Humanitarian Affairs, asked, ''What is a just society?'' She listed certain features of such a society—equality

before the law, no arbitrary derogation of rights, respect for diversity and no arbitrary use of power.

A just society, or "society for all", she said, had to overcome the problems of unequal access to resources, and apathy or over-optimism, both of which tolerated the present economic disparities. At the same time, a society had to recognize rewards commensurate with work, risk and talent. Equality and a rewarding system must be balanced.

The problem of international economic disparities remained as a crucial challenge, she said. "Now that the East-West tension is relaxed, it is surely high time to turn energies and resources so released to bridging that other great divide, between North and South, which poses an even greater, more insidious threat to future peace and security." Allowing "have-not" countries to compete freely in the global economy could constitute a scheme of "sharing of resources".

UN Photo/E. Debebe

From left to right: Vitit Muntarbhorn, United Nations Special Rapporteur on the Sale of Children; Margaret J. Anstee, head of the United Nations Centre for Social Development and Humanitarian Affairs; Joe Sills, United Nations Department of Public Information (DPI).

"How do we really inculcate action in equitable resource allocation?" Mr. Muntarbhorn asked.

This problem must be dealt with locally. The cooperation of the private sector and of NGOs was crucial, he said. Journalists could play an important role as watchdog and in information dissemination.

Ensuring Safety of Journalists

Anne Nelson, Executive Director, Committee to Protect Journalists, addressing the topic of freedom of the press and safety of journalists, said there had been recent improvements in the situations surrounding journalists. But civil wars, libel laws and traditional forms of press control were matters of concern.

With the end of ideological conflicts, there would be more civil conflicts over ethnic and national divisions, she said. Journalists would continue to be under crossfire and in danger of their lives. Cases of killings and injuries of journalists in Croatia attested to this concern.

Presenting the cases of South Africa and Greece, she elucidated the continuous abuse of journalists all over the world. The end of ideological conflicts did not necessarily mean the end of journalist abuse and press control, she said.

Mia Doornaert, President of the International Federation of Journalists, addressed the close relationship between the independent work of journalists and fundamental human rights.

"Attacks on journalists . . . are an attack on the whole society", she said. "Where journalists are prevented from investigating and publishing the truth, the whole society is deprived of two basic rights—the right to know and the right to freedom of expression."

Another restriction journalists often suffered, she said, was self-censorship caused by undue pressure, harassment and unnecessary precaution. In this respect, "absence of government control is the first but not the only condition for real press freedom", she said.

Professor Nicholas Daniloff, School of Journalism, Northeastern University, Boston, said that

legislating immunity for journalists could be a viable protection of their freedom in reporting. On the other hand, such an arrangement would make journalists less independent of the Government, he said. The autonomy of journalists must be preserved.

Human Rights and AIDS

Dr. Dorothy Blake, Deputy Director of WHO's Global Programme on AIDS, focused her talk on the human rights aspects of AIDS-related issues.

Health was one important component of universal human rights, she stressed. Thus discriminating practices against HIV carriers and AIDS patients were a blatant violation of basic human rights. "Without a valid public health foundation, limitations of the individual rights of persons with HIV infection and

UN Photo/E. Debebe

From left to right: Dr. Dorothy Blake, Deputy Director, WHO Global Programme on AIDS; Joe Sills, DPI; Elizabeth Preble, Consultant in Health Policies and Programmes.

AIDS are unjustified, and amount to discrimination", she said. "Non-discrimination is not only a human rights imperative, but a technically sound strategy for ensuring that infected persons are not driven underground."

Dr. Blake proposed three prevention measures: programmes of information and education, individual efforts to assume the responsibility of not putting oneself or others at risk and the establishment of support systems for patients.

To translate these measures into effective policies, the balance between benefits to public health and possible adverse effects of such measures must be carefully analysed, Dr. Blake said. For instance, the autonomy of HIV-infected persons was respected by anonymous testing and confidentiality; but this might imply withholding information from another who might be harmed. There were both cost and benefit sides in such policy measures, and a firm balance between interacting principles of human rights, ethics, law and public health policy must be reached.

The relationship between public health and privacy was one of the main concerns around the AIDS/HIV pandemic, said Professor Ronald Bayer, School of Public Health, Columbia University, New York. Despite the recognition of the right to privacy in liberal societies, the ongoing realities suggested that this was not the case in AIDS-related issues.

Entering the second decade of the pandemic, the consensus that recognizes the right to privacy had begun to erode, he said. The fair balance between public health and human rights must be restored.

Elsa Stamatopoulou-Robbins, Chief, United Nations Centre for Human Rights, New York Office, identified a series of rights being violated by discriminatory measures and policies against HIV-infected persons. These included the right to life, the right to privacy, the right to work and the right to an adequate standard of living, all of which were protected under the Universal Declaration of Human Rights and other United Nations instruments.

No form of discrimination against HIV-infected persons was permissible from both the viewpoint either of international law or of public health, she said. Information dissemination, education and

strict confidentiality were the most effective tools to deal with the pandemic.

Recognition of fundamental human rights was an indispensable part of facing the pandemic, she said. Only by mobilizing human rights networks—such as Governments, NGOs and the media—could the pandemic be effectively tackled.

* * *

List of Speakers and Panelists, International Journalists' Round Table on Human Rights and the United Nations

"United Nations Action to Protect and Promote Human Rights"

Speaker: Thérèse P. Sévigny, Under-Secretary-General for Public Information.
Keynote speaker: Jan Martenson, Under-Secretary-General for Human Rights.
Panelists: Ambassador Andreas Mavrommatis, United Nations Human Rights Committee; Sev Fluss, Chief, Health Legislation Unit, World Health Organization (WHO); Jerome Shestack, Chairman, International League for Human Rights, New York; Ian Chambers, ILO Representative to the United Nations, New York.

"Human Rights and AIDS/HIV"

Speaker: Dr. Dorothy Blake, Deputy Director, Global Programme on AIDS, WHO.
Panelists: Elizabeth Preble, Consultant in Health Policies and Programmes; Professor Ronald Bayer, School of Public Health, Columbia University, New York; Elsa Stamatoupoulou-Robbins, Chief, New York Office, United Nations Centre for Human Rights.

"Peace, International Humanitarian Law and Humanitarian Issues"

Speaker: Sadako Ogata, United Nations High Commissioner for Refugees.
Panelists: Jean Paul Fallet, Chief of Delegation to the United Nations, International Committee of the Red Cross; John Miles, Director, New York Office, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); Roberta Cohen, Senior Advisor for Human Rights, Refugee Policy Group, Washington, D.C.; Catherine O'Neill, Chair, Women's Commission for Refugee Women and Children, New York.

"Social Justice and Economic Disparities"

Speaker: Margaret J. Anstee, Head of the United Nations Centre for Social Development and Humanitarian Affairs.
Panelists: Sir Paul Reeves, Anglican Observer at the United Nations; Professor Vitit Muntharbhorn, United Nations Special Rapporteur on the Sale of Children; Sima Wali, Chief, Refugee Women in Development, Washington, D.C.; Sarah Timpson, Director, Human Development Division, United Nations Development Programme (UNDP).

"Freedom of the Press and Safety of Journalists"

Speaker: Anne Nelson, Executive Director, Committee to Protect Journalists, New York.
Panelists: Mia Doornaert, President, International Federation of Journalists, Brussels; Paul-Henry Morard, Head, Press Division, International Committee of the Red Cross, Geneva; Professor Nicholas Daniloff, School of Journalism, Northeastern University, Boston; Alain Modoux, Director, Office of Public Information, United Nations Educational, Scientific and Cultural Organization (UNESCO).

Human Rights and the Family

The United Nations is spearheading the observance of 1994 as the International Year of the Family. One of the principles of the Year is: families assume diverse forms and functions from one country to another, and within each national society.

While individuals and families struggle to retain their proud traditions and heritage, for many people the most pronounced feature of their lives is change. Worldwide the family has been undergoing constant transformation, due to social changes, economic problems and the pressures of modernization and development.

Reference to the family in many international legal instruments reflects the continuing concern and respect of United Nations Member States for this social structure. As these instruments evolved, they struck a balance between promoting human rights and respecting existing traditions, as well as protecting the family as an institution while safeguarding the individual rights of its members.

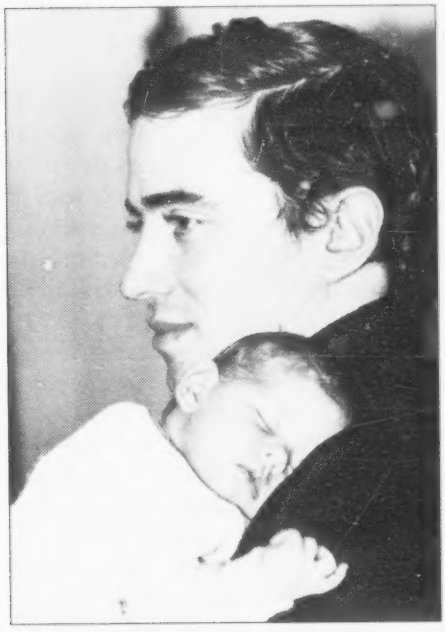
A number of international instruments refer to the family, including: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), the Convention on the Rights of the Child (1989), as well as a host of others. This article reviews some of the basic provisions concerning the family found in major international legal instruments.

Functions of the Family

The family has been recognized in international legislation since 1948, when the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. According to the Declaration, "the family is the natural and fundamental group unit of society" (article 16-3), and "men and women of full age, without any limitation due to race, nationality or religion, have the rights to marry and to found a family" (article 16-1).

The family has been described according to its function in society, for example, the functioning of the family as an economic unit. The Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself [herself] and of his [her] family, including food, clothing, housing and medical care and necessary social services" (article 25-1). Where this right cannot be assured because of "unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [her] control, the right to social security should be assured" (article 25-1).

UN Photo



The child should grow up in an atmosphere of happiness, love and understanding.

Moreover, even when a person is stateless or a refugee, his/her right to social security related to family responsibilities has to be guaranteed (Convention relating to the Status of Refugees, article 24-1 (*b*); Convention relating to the Status of Stateless Persons, article 24-1).

Reproduction and the upbringing of children have been viewed as another important function of the family. One of the basic rights of parents is to decide how many children to have and when to have them. The Proclamation of Tehran, adopted at the International Conference on Human Rights held at Tehran in 1968, states that "parents have a basic human right to determine freely and responsibly the number and the spacing of their children" (paragraph 16).

Family and the Child

International instruments also focus on the child, who, "for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (Convention on the Rights of the

UNHCR/A. Hollmann

Even when a person is stateless or a refugee, his/her right to social security related to family responsibilities has to be guaranteed.

Child, preambular paragraph 6). In addition, "every child shall have ... the right to such measures of protection as are required by his [her] status as a minor, on the part of his [her] family, society and the State" (International Covenant on Civil and Political Rights, article 24-1).

To help the family in assuming this role in the child's growth, the International Covenant on Economic, Social and Cultural Rights states that "the widest possible protection and assistance should be accorded to the family, ... particularly for its establishment and while it is responsible for the care and education of dependent children" (article 10-1). For the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, "Child welfare depends upon good family welfare" (article 2).

When the child cannot get this support from his or her family, "society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support", says the Declaration of the Rights of the Child (Principle 6). When the child is considered a refugee, States shall cooperate with competent organizations "to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family" (Convention on the Rights of the Child, article 22-2).

Family and Education

International instruments stress the role the family plays in education, including the transmission of traditional culture and religion. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that "the parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion of

belief and bearing in mind the moral education in which they believe the child should be brought up'' (article 5-1).

The family is also expected to educate the child with a broad perspective. The Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples states that ''a major aim in educating the young shall be to develop all their faculties and to train them to acquire higher moral qualities, to be deeply attached to the noble ideals of peace, liberty, the dignity and equality of all men [and women], and imbued with respect and love for humanity and its creative achievements. To this end the family has an important role to play'' (principle VI, paragraph 1).

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International instruments stress the role the family plays in education.

The family role with children is not limited to providing welfare and education. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as ''The Beijing Rules'', mention the family as one of the possible resources ''for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for interven-

tion under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law'' (1.3). If an offence has occurred, diversion or non-intervention is considered to be the preferred response ''where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner'' (11, Commentary). The Rules also require ''the separation of children from their parents'' only as ''a measure of last resort'' (18, Commentary). In any case, the rehabilitation of the juvenile within the family unit is considered to be most desirable (25.1).

Protection of the Family as an Institution

On the basis of these functions, the family has been considered as an object of protection as well as an institution which should be free from all kinds of outside intervention and discrimination. The Universal Declaration of Human rights states that ''no one shall be subjected to arbitrary interference with his [her] privacy, family, home or correspondence'' (article 12). Also, ''everyone has the right to the protection of the law against such interference or attacks'' (ibid.).

However, more recent legislation has recognized that some forms of traditional families may not necessarily ensure fundamental human rights for all its members. In principle, the Universal Declaration of Human Rights states that men and women of full age ''are entitled to equal rights as to marriage, during marriage and at its dissolution'' (article 16-1). But the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, of 1962, acknowledges that ''certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights'' (preambular paragraph 3).

Moreover, the 1979 Convention on the Elimination of All Forms of Discrimination against Women had to repeat that discrimination against women "hampers the growth of the prosperity of society and the family" (preambular paragraph 7). The same Convention also refers to "the great contribution of women to the welfare of the family", and articulates that "the upbringing of children requires a sharing of responsibility between men and women and society as a whole" (preambular paragraph 13). It further states

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The upbringing of children is another important function of the family.

that "a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women" (paragraph 14). The family as an institution is therefore required to keep a balance among the individual rights of its members.

Family responsibilities should not cause discrimination outside the family, says the ILO Convention No. 111, concerning Discrimination in Respect of Employment and Occupation, of the International Labour Organisation (ILO). That Convention, of 1958,

states that "other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination" (article 5-2).

The Individual and the Family

The close relationship between an individual and his/her family sometimes needs special consideration. In criminal justice, "the term 'victim' . . . includes, where appropriate, the immediate family or dependants of the direct victim", according to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (paragraph 2). On the other hand, "a person may be considered a victim . . . regardless of the familial relationship between the perpetrator and the victim" (ibid.).

In recognizing the family as a fundamental human right, the Standard Minimum Rules for the Treatment of Prisoners state that prisoners have the right to correspond with their families, to receive visits of their families, and to inform their families of their imprisonment or transfer (paragraphs 37 and 44).

Basic Human Rights and the Family

In international legislation, the family has been mentioned in many different contexts. This shows that the concept of the family—its role and functions—has been changing over the years. However, the focus on the family, its welfare and its functioning with sufficient support from family members, society and the State remain an important part of achieving basic human rights. These rights are accorded to every individual, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the culturally and economically diverse world of today, the realization of these rights requires an international cooperation

based on the free consent of people and understanding of the relationship between human rights and the family.

* * *

References to the Family in International Legal Instruments

Some key sections dealing with the family can be found in the following declarations and conventions, adopted by the international community since 1948:

Universal Declaration of Human Rights, 1948, articles 12, 16(1), 16(3), and 25(1).

Convention Relating to the Status of Refugees, 1951, article 24(1b).

Convention Relating to the Status of Stateless Persons, 1954, article 24(1).

Standard Minimum Rules for the Treatment of Prisoners, 1955, paragraphs 37 and 44.

Declaration of the Rights of the Child, 1959, principle 6.

Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, 1965, principle VI, paragraph 1.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1965, preambular paragraph 3.

International Covenant on Civil and Political Rights, 1966, articles 23(1) and 24(1).

International Covenant on Economic, Social and Cultural Rights, 1966, article 10(1).

Proclamation of Tehran, adopted at the International Conference of Human Rights in Tehran, 1968, paragraph 16.

Convention on the Elimination of All Forms of Discrimination against Women, 1979, preambular paragraphs 7, 13, and 14; article 16, paragraph 1(e).

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981, article 5(1).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (''The Beijing Rules''), 1985, principles 1(1) and 1(3).

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, paragraphs 2, 3, 6(d), 8 and 12(b).

Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, 1986, article 2.

Convention on the Rights of the Child, 1989, preambular paragraph 6 and article 22(2).

Traditional Practices Affecting the Health of Women and Children

> "Since the earliest of times, humankind has evolved a variety of practices for the promotion of health and prevention of disease ... Some of these traditional practices are no doubt useful, others are harmless, and yet others positively dangerous".
>
> Report of the United Nations Working Group on Traditional Practices Affecting the Health of Women and Children

It is on the dangerous traditional practices that the United Nations has focused its attention—in particular on female circumcision, preferential treatment for male children and traditional birth practices. These issues were selected as priorities by the Working Group on Traditional Practices set up by the United Nations in 1984.

Female Circumcision

Female circumcision affects some 75 million women and children. It exists in Indonesia, Malaysia, Yemen and at least 25 African countries. It also exists among immigrant communities in some European countries and Australia, says the 1991 United Nations report on traditional practices.

The age at which circumcision is performed varies from a few days old, as in Ethiopia, to seven years old in Egypt and to adolescence in West Africa.

Often this practice is performed by the old women of the village or traditional birth attendants. In this case anaesthetics, sterilized instruments and disinfectants are seldom used, and the practice presents high health hazards.

The immediate effects can be haemorrhage, tetanus and infection. Later complications can include

obstructed labour, psychological problems and infertility as a result of infection.

In various countries the practice is steadily declining in urban areas, but remains constant in the countryside. According to the 1986 report of the United Nations Working Group, "female circumcision is becoming more and more unpopular as a result of social change (urbanization) and educational progress, but ... it continues to be practised on a large scale for reasons of social conformism".

In certain population groups, circumcision, far from losing ground, is practised in hospitals and health clinics. Medical personnel, for financial reasons, are replacing traditional circumcisers. Not only do they profit from the practice, but they perpetuate it by reducing risks to a minimum, since it is performed in a medical setting. This could give circumcision a new legitimacy.

Among the reasons presented for maintaining the practice are religion, custom, decreasing women's sexual desire, hygiene, aesthetics, facility of sexual relations and fertility, the 1991 United Nations report says.

Many women believe that as good Muslims they have to undergo the operation, even if it is not mentioned in the Koran and has been condemned by prominent religious leaders. To be clean and proper, fit for marriage, circumcision is often a precondition.

Establishing identity and a sense of belonging is another reason. For instance, in Sierra Leone and Liberia, girls 12 and 13 years old undergo an initiation rite by an older woman, who teaches them how to be a good wife and co-wife, how to use herbal medicines and the secrets of the women's society. The initiation also involves the ritual of circumcision. After the initiation, the girls are accepted as full members of society and are eligible for marriage. An uninitiated girl is not ready for marriage.

Studies have shown that a major reason for continuing the practice is the crucial role of elderly women, who are instrumental in conserving ancient

models. In a survey, only 31 per cent of mothers and 31 per cent of fathers of circumcised girls took the initiative in having the circumcision performed. Most parents acquiesced passively, conditioned by those around them and in particular by older people.

The practice was banned by law in the Sudan (1946) and in Egypt (1978). In the Sudan this produced resistance and negative reactions, and circumcision continued to be performed in secret. Death occurred in silence, and cases of infection, haemorrhage and tetanus were not reported to hospitals.

The United Nations Commission on Human Rights first discussed female circumcision in 1952. Since then the Commission has stated that the operation is not only dangerous to health, but injurious to women's dignity.

The World Health Organization (WHO) has condemned female circumcision as a serious health risk. In 1979 WHO organized in the Sudan the first regional seminar on traditional practices affecting the health of women and children. The seminar emphasized the health danger circumcision poses, and recommended to Governments measures to eradicate it.

Preferential Treatment for Male Children

The practice of giving preference to sons is prevalent, in varying degrees, in many societies in the world.

In South Asia the birth of a son is always accompanied by ceremonies and rituals; rarely so for the birth of a girl. In northern India, rites such as the religious thread ceremony and the first haircut are all centred around the male child. In Bangladesh to have a daughter is like ''watering the neighbour's tree''—nurturing something whose profits will accrue to someone else.

Son preference has negative consequences for the girl child—higher mortality, higher malnutrition and delay in health care.

In some agrarian societies, where the need for manpower is strongly felt, male members of the family eat first the best part of the food, while the women share the leftovers. Studies in India, Jordan, Pakistan and the Syrian Arab Republic indicate that the median weight of girls is below that of boys.

Girls are also less cared for when they are ill. Studies in Bangladesh, Egypt and Nigeria show that there is a greater tendency to take boys to health clinics when sick.

Early marriage is another problem. Among certain groups in Asia and Africa, girls get married when they are 11-13 years old, and start having children early. Giving birth at that age can permanently injure the mother's health, and the maternal mortality rate of girls aged 11-13 is three times greater than that of women 20-24 years old.

In extreme cases some practices can be fatal. Son preference, when accompanied by neglect and discrimination towards girls, "leads to serious health consequences which account for between 500,000 and 1 million deaths among female children", according to the 1986 report of the United Nations Working Group.

The main reasons for preferring boys are cultural and economic. In most societies the family name is carried on by male children. Among many communities in Asia and Africa, the sons are those who perform burial rites for their parents. Parents without a son do not expect to have a proper burial that "secures their peace in the next world".

Women's low economic status and the low esteem attached to their economic contributions are other major reasons. In agricultural societies, the need for a strong labour force perpetuates son preference. Inheritance laws are another reason: girls inherit hardly any property from their parents, and wives often have no right to inherit the property of their husbands. This leaves women economically vulnerable and with low social status.

The neglect of female children is not necessarily wilful, the 1986 report of the United Nations Working Group notes. "It is difficult to imagine any mother deliberately harming her own child, regardless of its sex. This type of behaviour is more a conditioned response in a situation of scarcity, where limited resources need to be optimally invested. Regardless of whether discrimination against daughters is casual or deliberate, the damage it does to female health is considerable."

Child Delivery

In traditional societies, high child mortality rates are attributed to supernatural powers and evil spirits. Pregnancy and child delivery arouse fear and anxiety. To deter mishaps, various kinds of practices are performed.

Pregnant women are subject to diet restrictions in many countries. There are restrictions on the amount of food to be eaten, as well as on particular foods. Often the foods restricted are those high in protein, such as milk, eggs and meat. Women thus seldom get the additional calories required during pregnancy.

In Sierra Leone, a pregnant woman refrains from eating eggs, chicken, fish and beans, thought to cause health problems. In Guinea, pregnant women are forbidden to eat eggs or drink milk, for fear that the child will be born with a fragile skull or will be dumb.

The woman must also avoid certain activities. For instance, in Sierra Leone bathing at night leads to being seen by bad spirits, who will cause abnormalities in the baby.

Certain ways of facilitating the delivery can be harmful for mother and child. In Nigeria a cut is made if the midwife believes that the birth canal is too narrow to allow normal delivery—a practice that can lead to haemorrhage and infection. In Sierra Leone the midwife accelerates the delivery by sitting astride the thorax of the woman in labour—a practice that can be fatal.

In Ethiopia a newborn child is bathed with cold water, and butter is pushed down its mouth in the belief that the baby will have a smooth voice. The cold bath can cause shock and respiratory problems. In Nigeria a delivering mother is given a very hot bath and a salty diet—a practice known to cause serious burns and heart failure.

United Nations Action

In 1984 the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities—a sub-body of the United Nations Commission on Human Rights—decided to carry out a study on traditional practices. A Working Group on Traditional Practices Affecting the Health of Women and Children was set up, with Mrs. Halima Embarek Warzazi, of Morocco, as its rapporteur.

The Working Group submitted its report to the Commission on Human Rights in 1986. The report examined various traditional practices—female circumcision, other forms of mutilation such as facial scarification, forced feeding of women, early marriage, nutritional taboos, traditional birth practices, and son preference.

The Commission in 1988 requested the Sub-Commission to consider measures to eliminate such practices, and asked Mrs. Warzazi to prepare a second report. The Sub-Commission decided in 1989 to hold a regional seminar in Africa on the issue.

The first United Nations Regional Seminar on Traditional Practices Affecting the Health of Women and Children was held in Ouagadougou, Burkina Faso, in April-May 1991. It was organized by the United Nations Centre for Human Rights in cooperation with the Government of Burkina Faso.

United Nations Seminar

The seminar was attended by experts from 15 African Governments, universities, non-governmental organizations and the United Nations.

"All these practices are deeply rooted in a magical-cum-religious medium which prevents their dying out rapidly", Hamid Gaham of the United Nations Centre for Human Rights told the seminar.

"They may seem backward to us, but they are an integral part of the culture of those who practise them," he said. "In traditional African societies, the physical and psychological blossoming of the child and his or her integration into the community occur in stages which are carefully observed and respected ... The individual's identity and place in society are engraved on his or her mind and body by a variety of traditional methods. The fact remains that the process of upbringing and initiation which leads to integration within the community can be difficult and painful.

UN Photo/J. Isaac

The United Nations has focused on protecting the health of women and children.

"One of the first means of doing away with [these practices] is the law. Any traditional practice which adversely affects the dignity of women and children should be made illegal", he said.

"Then, efforts are needed in the educational field, to make people aware of the adverse effects of these practices. Each country needs to identify institu-

tions and organizations which can be assigned the task of promoting women's and children's rights . . . for example women's, teachers', parents' or youth associations'', he added.

''Female circumcision is the most pernicious impediment to the psychological and physical flowering of women and children'', said Mrs. Chantal Compaoré First Lady of Burkina Faso and honorary president of that country's national committee against female circumcision.

''The campaign against female circumcision should be conducted in two phases: the first non-coercive, the second coercive'', she said. ''The non-coercive phase would involve making people aware of the problem by all available means: film shows, radio and television broadcasts, discussions, topical plays etc

''The coercive phase, in view of the lack of legal provisions against female circumcision in many African States, would involve drafting legal instrument to punish the practice without fail'', she added.

Female circumcision is often part of initiation rites, one expert noted. Initiation as such is not wrong since it enables girls to become integrated in society and strengthens their links with the community. The peoples that practise circumcision do not want to give it up for fear of losing their culture. Thus it is important to consider how to eliminate circumcision while preserving tradition, to involve the peoples concerned in eradicating it.

Most experts felt that the change of mentalit needed to eliminate circumcision must be effected through education, information and making people aware of its harmful effects.

Seminar's Recommendations

The experts observed that, despite its seriousness, the problem of traditional practices has not received the attention it deserves from most of the Governments concerned. Such practices persist becaus of the lack of political will of many States and the failure to inform and educate the public.

The experts recommended, among other things, that Governments:

- ratify and implement the international treaties on the protection of women and children;
- adopt laws prohibiting harmful practices;
- set up national committees to combat them;
- train doctors and nurses on the ill effects of such practices;
- conduct campaigns (through television, newspapers, sketches, plays) against such practices; and
- cooperate with religious and traditional leaders to eliminate the practices.

The experts also recommended that health workers be required to dissociate themselves from harmful practices, and that circumcisers be retrained to provide them with alternative sources of income.

Government and NGO Action

National and non-governmental organizations (NGOs) are crucial in the effort to stop harmful practices.

At least 22 countries have set up national committees to combat such practices. The Gambia's committee has reached some 10,000 women. Ghana's committee is designing projects to retrain circumcisers, and Mali's committee has held workshops in several rural areas.

The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children—the parent body of the national committees—organizes information and training campaigns in several countries. The aim is to educate and convince heads of communities and public opinion leaders, so that they promote a change of attitude.

Various NGOs, such as the International Council of Women, Zonta International and Rädda Barnen International, are carrying out activities to terminate such practices. Educational programmes,

seminars and financial assistance are among the activi ties undertaken.

Plan of Action

Meeting in August 1991, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities stated that harmful traditiona practices are a violation of human rights within the meaning of United Nations instruments—the Universa Declaration of Human Rights, the Convention on the Rights of the Child, and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

The Sub-Commission recalled the growing awareness that practices such as female genital mutilation, preference for male children and nutritional taboos are a gross violation of human rights.

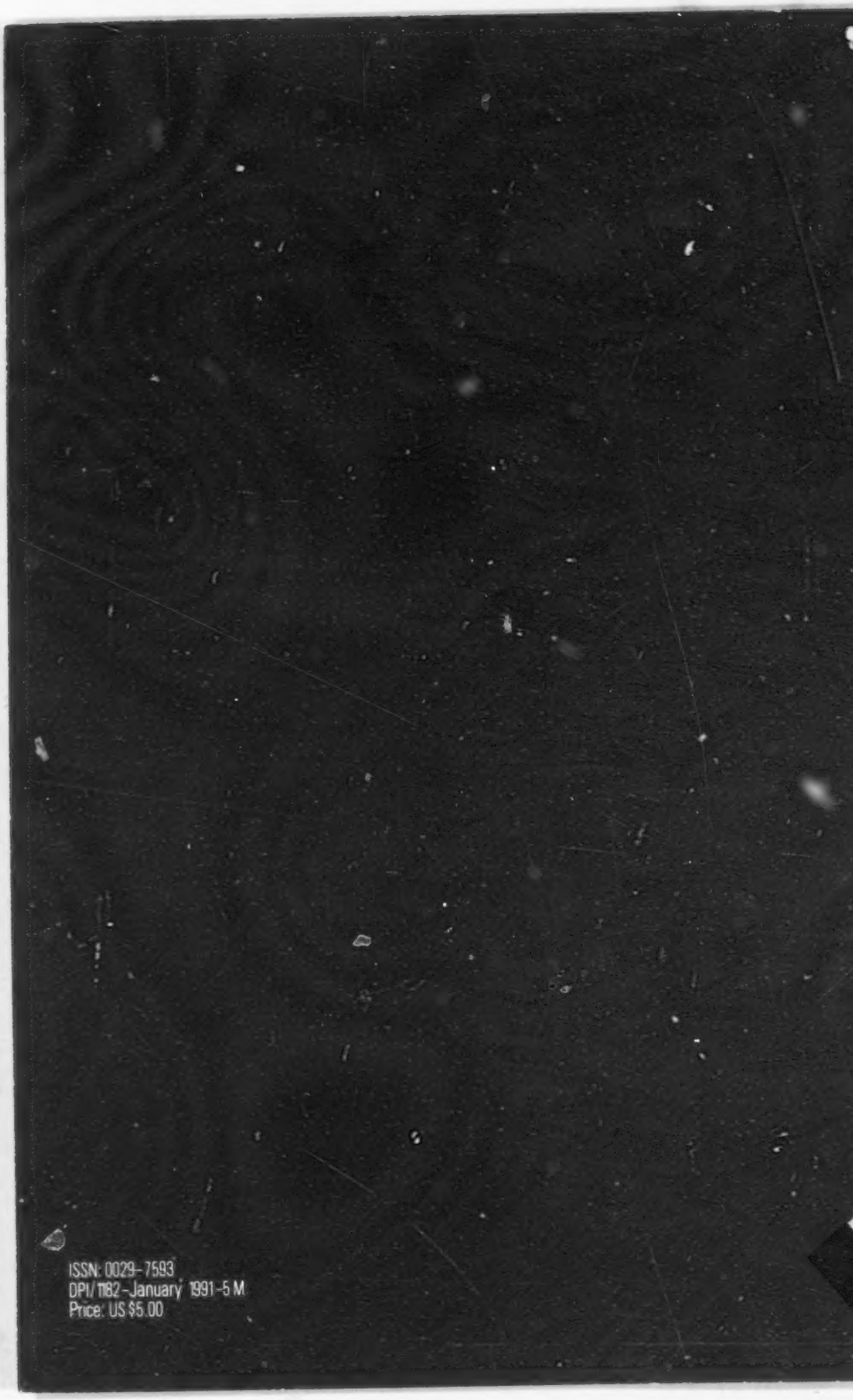
It also noted that States parties to the Unitec Nations Convention on the Rights of the Child are obliged to take action against such practices. The Convention, which has been ratified by 102 countries, calls on States parties to "take all effective and appropriate measures with a view to abolishing traditional practice prejudicial to the health of children".

The United Nations Centre for Human Rights is organizing a second regional seminar on the issue. It will take place in Asia in 1992, and will focus on son preference, traditional practices related to marriage, and violence against women, including mutilation and bride burning.

Mrs. Warzazi, the Special Rapporteur on the issue, is preparing a plan of action for the elimination of harmful practices.

There is noticeable progress in the degree of public awareness of the harmful effects of these practices, Warzazi notes in her 1991 report. "The efforts made by the Inter-African Committee . . . and its affiliates at the national level have succeeded in breaking the taboo about harmful traditional practices through education and information campaigns. More Govern-

ments are demonstrating willingness to tackle the problem in Africa, including through legislative measures prohibiting harmful practices."



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